

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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DOUGLAS WAGNER,

Plaintiff,

20 Civ. 1314

v.

CSX TRANSPORTATION, INC.,

JURY TRIAL REQUESTED

Defendant.

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COMPLAINT

Plaintiff, by his attorneys, Flynn & Wietzke, PC, complains of the Defendant and alleges:

THE PARTIES

1. The plaintiff is a resident of the State of New York, County of Erie, and City of Holland.
2. The defendant is a railroad carrier corporation providing railroad transportation, in interstate commerce by rail and operates a railroad system and railroad yards within the jurisdiction of this Court and in various other States, with a usual place of business in New York.
3. Prior to February 5, 2019, and at all times hereinafter mentioned, the defendant employed the plaintiff as a Signal Maintainer under its direction, supervision and control and in furtherance of defendant's business in interstate commerce.
4. Prior to February 5, 2019 and at all times hereinafter mentioned, the defendant maintained, operated and controlled CP25, Niagara Branch, Niagara Falls, New York which contained defendant's tracks, rails, switches, sidings, roadbeds and appurtenances thereto, over, through and upon which the defendant operated engines, trains and cars under its control and direction.
5. During all times herein mentioned, the defendant was and is engaged in interstate commerce by providing railroad transportation among multiple states.

JURISDICTION AND VENUE

6. The plaintiff brings the First Cause of Action against the defendant for violation of the Federal Employers' liability Act, 45 U.S.C. §51 et seq. (FELA).

7. This Court has subject matter jurisdiction in this case pursuant to 45 U.S.C. §56.

8. Venue is proper in this District because a substantial part of the events or omissions giving rise to the claim occurred in this District, because defendant resides in this District and/or because defendant does business in this District.

FACTS

9. At the time of the defendant's FELA violations, the plaintiff was employed by the defendant and qualified as an employee within the meaning of 45 U.S.C. § 51.

10. On February 5, 2019, the plaintiff was working as a Signal Maintainer at the direction and training of defendant, when plaintiff was in the process of removing old power poles as he placed the ladder against the pole, climbed the ladder and then the pole fell, causing him to fall approximately twelve (12) feet to the ground, causing an injury to his back, elbow, knees, feet and ankles.

11. Defendant's conduct, more specifically set forth below, caused, in whole or in part, the plaintiff to suffer various physical, psychological and economic harms.

12. Plaintiff's injuries include, but are not limited to, his back, rib, hip, arm, elbow, ankle, feet, groin and legs.

COUNT I **Violation of FELA**

13. The plaintiff adopts by reference and realleges each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if set forth under this cause of action.

14. This Cause of Action is brought under the Federal Employers' Liability Act, (45 U.S.C. Sec. 51 et seq.).

15. On or about February 5, 2019, while the plaintiff, an employee of the defendant, was in the performance of his duties as a Signal Maintainer at CP25, Niagara Branch, Niagara Falls, New York, the defendant, its agents, servants and employees, so negligently and carelessly conducted themselves toward the plaintiff:

- a. in failing to provide plaintiff with a reasonably safe place to work;
- b. in failing to warn plaintiff;
- c. in failing to inspect plaintiff's work area;
- d. in failing to properly install the pole;
- e. in failing to ensure the pole was secured before directing plaintiff to climb up;
- f. in failing to supervise the work assigned to plaintiff;
- g. in failing to repair the pole before directing plaintiff to climb up;
- h. in failing to maintain plaintiff's work place; and, so negligently failed and neglected to enact and enforce safety rules, regulations, procedures, and practices for activities carried out by its personnel at the said place, that all of the foregoing brought about severe and disabling injuries to plaintiff, as set forth above.

16. The relevant injuries occurred while the plaintiff was acting in the furtherance of interstate commerce or in work closely or substantially affecting the same.

17. The plaintiff was damaged thereby in a sum in excess of \$100,000.00.

WHEREFORE, plaintiff demands judgment against the defendant on Count I in a sum in excess of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS; together with the costs and disbursements of this action.

Respectfully submitted

By: 

MARC WIETZKE
FLYNN & WIETZKE, PC
1205 Franklin Avenue
Garden City, NY 11530
Tel.: (516) 877-1234
E-mail: MWietzke@felaattorney.com